



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 11, 1993

Mr. Edward A. Neal  
Superintendent  
Del Valle Independent School District  
2404 Shapard Lane  
Del Valle, Texas 78617

OR93-307

Dear Mr. Neal:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 19174.

The Del Valle Independent School District (the "school district") has received a request for information relating to documented incidents of criminal activity in the school district. Specifically, the requestor seeks:

copies of all documents, writings, or other tangible things evidencing, reflecting or pertaining to the following:

1. investigation by the Travis County Sheriff's Office or the Texas Department of Human Services of any criminal activity including, but not limited to, sexual assault, indecency with children, aggravated sexual assault allegedly occurring at or within any Del Valle school at any time during the past five years through the present;
2. any claims or allegations of sexual assault, aggravated sexual assault or indecency with children or assault committed on or at any Del Valle school at any time in the past five years through the present;
3. any reports prepared by the Del Valle ISD or any employee thereof concerning or relating to any incident or allegation of assault, sexual assault, aggravated sexual assault or indecency with children occurring at or within any Del Valle school at any time during the past five years through the present; and

with children occurring at or within any Del Valle school at any time during the past five years through the present; and

4. any report or files pertaining to any criminal incident or episode occurring at or in a Del Valle school which has been subject of an investigation by the Travis County Sheriff's Office or the Texas Department of Human Services or a prosecution by the Travis County District Attorney's Office at any time during the previous five years through the present.

You have submitted the requested information to us for review. You claim that it is excepted from required public disclosure by sections 3(a)(3), 3(a)(14), and 14(e) of the Open Records Act.

Section 14(e) incorporates another source of law, specifically, the requirements of the Family Educational Rights and Privacy Act (FERPA), into the Open Records Act, and makes them prevail over conflicting provisions of the Open Records Act. *See* Open Records Decision No. 431 (1985). Section 14(e) provides:

Nothing in this Act shall be construed to require the release of information contained in education records of any educational agency or institution except in conformity with the provisions of the Family Educational Rights and Privacy Act of 1974, as enacted by Section 513 of Public Law 93-380, codified as Title 20 U.S.C.A. Section 1232g, as amended.

V.T.C.S. art. 6252-17a, § 14(e). FERPA provides the following:

No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a)...) of students without the written consent of their parents to any individual, agency, or organization.

20 U.S.C. § 1232g(b)(1). "Education records" are records which:

- (i) contain information directly related to a student; and
- (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

*Id.* § 1232g(a)(4)(A).<sup>1</sup> Sections 3(a)(14) and 14(e) may not be used to withhold entire documents; the school district must delete information only to the extent "reasonable and necessary to avoid personally identifying a student" or one or both of his parents. Open Records Decision Nos. 332 (1982); 206 (1978). Thus, only information identifying or tending to identify students or their parents must be withheld from required public disclosure.

We have examined the records submitted to us for review. They document a number of incidents occurring in the school district during the past five years, including stabbings, assaults, sexual assaults, and the illegal carrying of weapons. We conclude that these incidents are of such a unique and isolated nature that withholding of all of the requested information is reasonably necessary in order to avoid personally identifying students. Accordingly, the requested information is subject to FERPA and may not be released under the Open Records Act.<sup>2</sup>

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<sup>1</sup>In conjunction with your claim that FERPA excepts the requested information from required public disclosure, you refer us to sections 3(a)(14) and 14(e) of the Open Records Act. Section 14(e) incorporates the requirements of the FERPA into the Open Records Act and makes them prevail over other inconsistent provisions of the Open Records Act. Open Records Decision No. 431 (1985). Section 3(a)(14) excepts from required public disclosure "student records at educational institutions funded wholly, or in part, by state revenue . . . ." V.T.C.S. art. 6252-17a, § 3(a)(14). The phrase "student records" in section 3(a)(14) has generally been construed to be the equivalent of "education records." Thus, our resolution of FERPA in this instance also resolves the application of section 3(a)(14) to the requested information. *See generally* Attorney General Opinion H-447 (1974); Open Records Decision Nos. 539 (1990); 477 (1987); 332 (1982).

<sup>2</sup>We understand that the requestor has received written authorization from his clients to obtain "education records" relating to their child. FERPA provides:

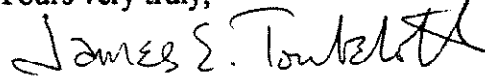
No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records other than directory information, or as is permitted under paragraph (1) of this subsection unless--

(A) there is written consent from the student's parents specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student's parents and the student if desired by the parents . . . .

20 U.S.C. § 1232(b)(2). We note that none of the information submitted to us for review relates to either the requestor's clients or to their child.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "James E. Tourtelott", with a stylized flourish at the end.

James E. Tourtelott  
Assistant Attorney General  
Opinion Committee

JET/GCK/le

Ref.: ID# 19174

cc: Mr. Brian W. Bishop  
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